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UTILITIES COMMISSION

Jeffrey S. Lovinger  
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August 20, 2010

## ***VIA UPS OVERNIGHT DELIVERY***

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 W Washington Street  
PO Box 83720  
Boise, ID 83720-0074

Re: Case No. PAC-E-10-08  
XRG, Complainant, vs.  
PACIFICORP dba ROCKY MOUNTAIN POWER, Defendant

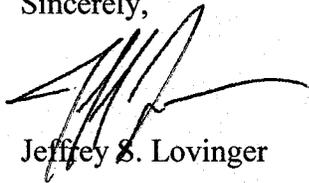
Dear Ms. Jewell:

Enclosed for filing in the above-captioned docket are an original and seven (7) copies of *ROCKY MOUNTAIN POWER'S ANSWER AND AFFIRMATIVE DEFENSES*.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Jeffrey S. Lovinger

cc: PAC-E-10-08 Service List

Enclosures

Mark C. Moench  
Daniel E. Solander  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
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Attorneys for Defendant PacifiCorp

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, )  
LLCs, )  
Complainant, ) Case No. PAC-E-10-08  
)  
v. ) ANSWER  
) AND AFFIRMATIVE  
PACIFICORP, DBA ROCKY MOUNTAIN ) DEFENSES  
POWER, )  
Defendant. )

1 Pursuant to IDAPA Rule 31.01.01.057, PacifiCorp, dba Rocky Mountain Power<sup>1</sup>  
2 (“Rocky Mountain Power”), hereby answers the Complaint filed by XRG-DP-7, LLC, XRG-DP-  
3 8, LLC, XRG-DP-9, LLC, and XRG-DP-10, LLC (collectively “XRG”) in Case No. PAC-E-10-08.

<sup>1</sup> In as much as PacifiCorp engages in regulatory proceedings before this Commission as Rocky Mountain Power, and includes resources such as the one in dispute here in rates set by this Commission for Rocky Mountain Power, we will throughout this proceeding refer to PacifiCorp as Rocky Mountain Power for consistency with the utility’s regulatory presence before the Commission.

1 **A. PRELIMINARY MATTERS**

2 Copies of all pleadings and other correspondence in this matter should be served upon  
3 counsel for Rocky Mountain Power at:

Jeffrey S. Lovinger  
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4 **B. ANSWER**

5 Rocky Mountain Power hereby answers XRG's Complaint in the above-captioned  
6 proceeding and states as follows:

- 7 1. Rocky Mountain Power denies that it does business in Idaho as Rocky  
8 Mountain Energy. Rocky Mountain Power admits the remaining allegations  
9 of paragraph 1.<sup>2</sup>
- 10 2. Having insufficient information or knowledge regarding the truth or falsity  
11 of the allegations of paragraph 2, Rocky Mountain Power denies the  
12 allegations contained therein and leaves XRG to the proof thereof.
- 13 3. The allegations of paragraph 3 are conclusions of law requiring no response.
- 14 4. The allegations of paragraph 4 are conclusions of law requiring no response.
- 15 5. Having insufficient information or knowledge regarding the truth or falsity  
16 of the allegations of paragraph 5, Rocky Mountain Power denies the  
17 allegations contained therein and leaves XRG to the proof thereof.

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<sup>2</sup> In this section, "paragraph" refers to the correspondingly numbered paragraph in XRG's Complaint.

- 1           6.     Having insufficient information or knowledge regarding the truth or falsity  
2           of the allegations of paragraph 6, Rocky Mountain Power denies the  
3           allegations contained therein and leaves XRG to the proof thereof.
- 4           7.     Rocky Mountain Power admits that XRG contacted Rocky Mountain Power  
5           in 2007 regarding power purchase agreements (“PPAs”) for proposed  
6           qualifying facilities in Idaho. Rocky Mountain Power otherwise denies the  
7           allegations of paragraph 7.
- 8           8.     Rocky Mountain Power admits it informed XRG in writing, on March 23,  
9           2009, May 11, 2009, and October 2, 2009, that available transmission  
10          capacity from the proposed delivery point – Brady substation – was  
11          insufficient for accepting more than 23 megawatts of net output from XRG’s  
12          proposed qualifying facilities. Having insufficient information or  
13          knowledge regarding the truth or falsity of the remaining allegations of  
14          paragraph 8, Rocky Mountain Power denies the allegations contained therein  
15          and leaves XRG to the proof thereof.
- 16          9.     Rocky Mountain Power admits that it has had contact with XRG regarding  
17          PPAs and that it delivered one draft PPA to XRG in May 2009 with the  
18          understanding that the draft PPA would be a template for the non-price terms  
19          and conditions of PPAs for the three remaining qualifying facilities proposed  
20          by XRG. Rocky Mountain Power admits that the draft PPA delivered to  
21          XRG in May 2009 contained the then-applicable avoided cost rates  
22          contained in Order No. 30744. PacifiCorp admits that it has not delivered  
23          any other draft PPAs to XRG.

1           10. Rocky Mountain Power denies that XRG had any right to rely on the draft  
2           PPA provided by Rocky Mountain Power which draft PPA included the  
3           following bold text disclaimer:

4                           **THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING**  
5                           **OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT**  
6                           **BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON**  
7                           **EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT**  
8                           **APPROVALS (INCLUDING FINAL CREDIT AND LEGAL**  
9                           **APPROVAL) AND ALL REGULATORY APPROVALS. ANY**  
10                          **ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS**  
11                          **SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS**  
12                          **MADE DURING NEGOTIATIONS PURSUANT TO THIS**  
13                          **WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK.**  
14                          **UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY**  
15                          **MANAGEMENT, SIGNED, DELIVERED AND APPROVED BY**  
16                          **ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL**  
17                          **HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR**  
18                          **IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS**  
19                          **WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.**

20           Having insufficient information or knowledge regarding the truth or falsity  
21           of the remaining allegations of paragraph 10, Rocky Mountain Power denies  
22           the allegations contained therein and leaves XRG to the proof thereof.

23           11. Rocky Mountain Power denies the allegations of paragraph 11.

24           12. Rocky Mountain Power admits that it received a letter from Commission  
25           Staff dated March 9, 2010, regarding Staff's intent to revise published  
26           avoided cost rates. Rocky Mountain Power admits that the recalculated  
27           avoided cost rates were substantially lower than the rates established by  
28           Order No. 30744. Rocky Mountain Power admits that the draft PPA it  
29           provided to XRG in May 2009 included the then-applicable avoided cost  
30           rates established by Order No. 30744.

31           13. Rocky Mountain Power admits that it concurred with Staff's March 2010

1           recalculation of avoided cost rates. Rocky Mountain Power admits that it  
2           forwarded a copy of Staff's March 9, 2010 recalculation letter to XRG's  
3           attorney Peter Richardson on March 10, 2010. Rocky Mountain Power  
4           admits that it did not provide XRG with notice of its concurrence with  
5           Staff's rate revision.

6           14.    The allegations of paragraph 14 have been previously addressed, above.

7           15.    Rocky Mountain Power denies the allegations of paragraph 15.

8           16.    Rocky Mountain Power denies the allegations of paragraph 16.

9           17.    The allegations of paragraph 17 are conclusions of law requiring no  
10          response.

11          18.    Rocky Mountain Power denies the factual allegations of paragraph 18. The  
12          remaining allegations of paragraph 18 are conclusions of law requiring no  
13          response.

14          Rocky Mountain Power denies any allegation not specifically admitted above. Rocky  
15          Mountain Power reserves the right to supplement this Answer or file a new Answer in the event  
16          XRG amends or otherwise modifies its Complaint. Rocky Mountain Power reserves the right to  
17          assert and file any affirmative or special defense that may become known by discovery  
18          proceedings or other means.

1 **C. AFFIRMATIVE DEFENSES**

2 For its FIRST AFFIRMATIVE DEFENSE, Rocky Mountain Power states XRG is not  
3 entitled to the relief sought in its Complaint because XRG and Rocky Mountain Power did not  
4 execute any PPA for XRG's Projects prior to March 15, 2010.

5 For its SECOND AFFIRMATIVE DEFENSE, Rocky Mountain Power states XRG is not  
6 entitled to the relief sought in its Complaint because, even if XRG did first provide all required  
7 information to Rocky Mountain Power on March 12, 2010, XRG cannot create a legally  
8 enforceable obligation on that same date as a matter of law.

9 For its THIRD AFFIRMATIVE DEFENSE, Rocky Mountain Power states XRG is not  
10 entitled to the relief sought in its Complaint because Rocky Mountain Power did not act in bad  
11 faith or with undue delay as a matter of law.

12 For its FOURTH AFFIRMATIVE DEFENSE, Rocky Mountain Power states that XRG  
13 is not entitled to the relief sought in its Complaint because XRG's Projects were not sufficiently  
14 mature to form a legally enforceable obligation on or before March 15, 2010, as a matter of law.

15 For its FIFTH AFFIRMATIVE DEFENSE, Rocky Mountain Power states that XRG is  
16 not entitled to the relief sought because XRG did not manifest intent to bind itself to a legally  
17 enforceable obligation prior to March 15, 2010, but rather merely sought to secure an option to  
18 sell to PacifiCorp at the pre-March 15 published avoided cost.

19 For its SIXTH AFFIRMATIVE DEFENSE, Rocky Mountain Power states that XRG is  
20 not entitled to the relief sought in its Complaint because, XRG failed to take any timely action  
21 before the Commission to challenge Rocky Mountain Power's actions and XRG is now barred  
22 by the doctrine of laches or the doctrine of estoppel from obtaining PPAs at the avoided cost  
23 rates in effect on March 12, 2010.

1           WHEREFORE, Rocky Mountain Power hereby respectfully requests that the  
2 Commission declare that XRG's Projects are not entitled to Idaho's avoided cost rates in effect  
3 prior to March 15, 2010.

Dated this 26<sup>th</sup> Day of August 2010.

Respectfully submitted,



Mark C. Moench OSB 2284  
Daniel E. Solander OSB 11467  
Rocky Mountain Power

Kenneth E. Kaufmann, OSB 982672  
Jeffrey S. Lovinger, OSB 960147  
Lovinger Kaufmann LLP

*Attorneys for Rocky Mountain Power*

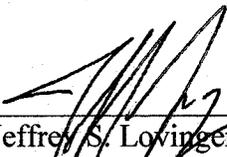
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 20<sup>th</sup> day of August, 2010, I served a true and correct copy of the foregoing *ROCKY MOUNTAIN POWER'S ANSWER AND AFFIRMATIVE DEFENSES* in Case No. PAC-E-10-08 on the following named persons/entities by United Parcel Service Overnight Delivery, properly addressed with postage prepaid, and electronic mail:

<p>Jean Jewell Commission Secretary Idaho Public Utilities Commission 472 W Washington Boise, ID 83702 <a href="mailto:jean.jewell@puc.idaho.gov">jean.jewell@puc.idaho.gov</a> (UPS Overnight Delivery)</p> <p>Mark C. Moench Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 <a href="mailto:mark.moench@pacificorp.com">mark.moench@pacificorp.com</a> (UPS Overnight Delivery)</p> <p>Daniel E. Solander Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, UT 84111 <a href="mailto:daniel.solander@pacificorp.com">daniel.solander@pacificorp.com</a> (UPS Overnight Delivery)</p>	<p>Peter J. Richardson Richardson &amp; O'Leary, PLLC 515 N. 27<sup>th</sup> Street PO Box 7218 Boise, ID 83702 <a href="mailto:peter@richardsonandoleary.com">peter@richardsonandoleary.com</a> (UPS Overnight Delivery)</p> <p>Gregory M. Adams Richardson &amp; O'Leary, PLLC 515 N. 27<sup>th</sup> Street PO Box 7218 Boise, ID 83702 <a href="mailto:greg@richardsonandoleary.com">greg@richardsonandoleary.com</a> (UPS Overnight Delivery)</p>
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DATED this 20<sup>th</sup> day of August, 2010.

LOVINGER KAUFMANN LLP

  
\_\_\_\_\_  
Jeffrey S. Lovinger  
Attorney for Rocky Mountain Power